

An Analysis of Islamic Criminal Justice Regarding the Validity of Audio Recordings as Evidence

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Abstract

This study examines the validity of audio recordings as evidence in both Indonesian criminal law and Islamic criminal law, in response to technological advancements in legal proof mechanisms. The objective is to explore how audio recordings are recognized and positioned within these two legal systems. The research employs a normative juridical approach through a literature review. The findings indicate that audio recordings are legally recognized as electronic evidence in positive law under Law No. 1 of 2024 concerning Electronic Information and Transactions, although they are not explicitly regulated in the Indonesian Criminal Procedure Code (KUHAP). In Islamic criminal law, audio recordings can be accepted as *qarinah* (strong indication) or *bayyinah* (clear evidence), particularly in *ta'zir* cases, provided they meet authenticity requirements and do not contradict the principles of sharia justice. This study underscores the importance of integrating positive law with Islamic legal values to address the challenges of legal evidence in the digital era.

INTRODUCTION

In the current era, technological advancements have progressed at an extraordinary pace, making technology an integral part of nearly all aspects of daily human life. In response to the challenges and problems faced in various fields, information and communication technology plays a vital role as it facilitates numerous aspects of human activities. One significant development is the use of voice recordings as evidence in court proceedings, which can serve as valid and objective sources of information in legal proof processes.¹ Therefore, the evidentiary process in court must continuously be updated and adjusted to ensure balanced justice and accuracy in every legal decision rendered.²

As criminal offenses grow increasingly complex, the evidentiary mechanisms in criminal law are also required to adapt to technological developments—particularly regarding the legitimacy of electronic evidence such as voice recordings. While electronic evidence has been acknowledged under the Law on Electronic Information and Transactions (ITE Law), its position is not yet explicitly regulated within the Indonesian Code of Criminal Procedure (KUHP).³ This raises legal questions about the probative value of voice recordings, especially when they serve as primary evidence in criminal trials. Within the context of criminal procedural law, evidence plays a crucial role in determining whether a defendant has indeed committed the alleged crime.⁴ Electronic information, including voice recordings, is increasingly presented as evidence because of its ability to factually capture events.⁵ However, the legitimacy and evidentiary strength of such recordings remain debated, particularly when not corroborated by other types of evidence.⁶ The judge's precision in evaluating the authenticity and relevance of this evidence is essential to prevent errors in judgment. Voice recordings have also become an important topic in Islamic criminal law (*fiqh jinayah*). Although not explicitly addressed in classical legal literature, many contemporary scholars permit the use of such recordings as *qarinah* (strong indication) or *bayyinah* (clear evidence), especially in *ta'zir* cases. Nevertheless, a thorough evaluation is still required to ensure such evidence does

¹ A. O. Safitri, P. A. Handayani, dan Y. T. Herlambang, *Manusia dan Teknologi: Studi Filsafat Tentang Peran Teknologi Dalam Kehidupan Sosial*, *Jurnal Pendidikan Sosial dan Humaniora* 2 (2023): 4.

² Sudarsono, *Kamus Hukum* (Jakarta: PT. Asdi Mahatsya, 2007), 234.

³ Achmad Sodiki, *Kejahatan Mayantara (Cyber Crime)* (Jakarta: Refika Aditama, 2010), 103.

⁴ I Wayan Edy Kurniawan dan Muhammad Zainal Abiddin, *Tentang Hukum Acara Pidana Pengantar dari Dekan Fakultas Hukum Universitas Udayana* (Depok: Indie Publishing, 2014), 196.

⁵ Lulu Azmi Sharfina, *Keabsahan Kesaksian (Keterangan Saksi) Yang Disampaikan Secara Teleconference di Persidangan* (Skripsi, Fakultas Hukum Universitas Islam Indonesia, 2018), 1.

⁶ Lulu Azmi Sharfina, *Keabsahan Kesaksian (Keterangan Saksi) Yang Disampaikan Secara Teleconference di Persidangan* (Skripsi, Fakultas Hukum Universitas Islam Indonesia, 2018), 1.

not contradict the principles of justice and the objectives of Sharia (maqāsid al-shari‘ah).⁷ Hence, examining the status of voice recordings as legal evidence is highly relevant, both in positive law and from the Islamic legal perspective.

The term “electronic document” refers to information created, transmitted, received, or stored in digital, analog, optical, or other electronic forms. These documents can be viewed, displayed, or heard through computers or electronic systems, and may consist of writing, sound, images, maps, photos, symbols, numbers, codes, or other data that carry meaning and can be understood by those with the requisite knowledge.⁸ With regard to electronic evidence, Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE Law) legitimizes electronic evidence as valid in criminal proceedings.⁹

According to Indonesia's criminal procedural law, *indications* (petunjuk) are valid forms of evidence under Article 184 of the KUHAP. These indications can be derived from technological advancements, such as voice recordings, which are frequently used to uncover criminal acts. Voice recording technology itself has a long history. The first voice recorder, known as the *Phonautograph*, was invented by French scientist Édouard-Léon Scott de Martinville on April 9, 1860. Initially used to study sound waves, it could not yet replay recorded sounds. Later, in the 1870s, Thomas Alva Edison developed this technology further alongside the telephone and succeeded in imprinting sound messages using electromagnetic methods. Since then, voice recordings have been widely used by various industries.¹⁰

Looking ahead, voice recordings will be increasingly utilized as indicators in criminal trials. The use of electronic evidence—especially voice recordings—is crucial for uncovering crimes that exploit advancements in information technology. Voice recordings can serve as vital tools in achieving justice by providing evidence in the prosecution of criminal acts. However, their use must be approached with judicial caution, ensuring that such recordings are authentic and unmanipulated. Prior verification of the recording's authenticity is necessary.¹¹ In *fiqh jinayah*, the evidentiary

⁷ Sudarsono, *Kamus Hukum*, 234.

⁸ Lulu Azmi Sharfina, *Keabsahan Kesaksian (Keterangan Saksi) Yang Disampaikan Secara Teleconference di Persidangan*, 1.

⁹ Lulu Azmi Sharfina, *Keabsahan Kesaksian (Keterangan Saksi) Yang Disampaikan Secara Teleconference di Persidangan*, 5.

¹⁰ Yaseya Wisnu Wardana, “Ini Dia Sejarah Singkat Rekaman Di Dunia,” *Compusician News.com*, <https://compusiciannews.com/2014/05/25/Ini-Dia-Sejarah-Singkat-Rekaman-di-Dunia-1088/>, diakses 6 Desember 2024 pukul 16.30 WIB.

¹¹ Alim HS dan Budi Rochmad D., *Hukum Pembuktian dalam Sistem Hukum Indonesia* (Jakarta: Sinar Grafika, 2013), 73–80.

stage is essential in the pursuit of truth in legal proceedings, and voice recordings can contribute meaningfully to this process. As time progresses, voice recordings are increasingly employed as indicative evidence in criminal court cases.¹²

For instance, in the corruption and money laundering case of Luthfi Hasan Ishaq (Case No. 38/Pid.Sus/TPK/2013/PN.Jkt.Pst), a member of Indonesia's House of Representatives (DPR RI) for the 2009–2014 term, recordings were pivotal. Between October 5, 2012, and January 29, 2013, Luthfi and Achmad Fathanah were involved in a bribery scheme related to additional beef import quotas from the Ministry of Agriculture, initiated by PT Indoguna Utama.

During a series of meetings and discussions—including one at Angus Steak House, Senayan City, and another at PT Indoguna's office—a financial agreement was reached whereby Luthfi would facilitate the quota process in exchange for monetary compensation. This bribery attempt involved high-ranking individuals, letters to economic ministers, and a financial commitment of up to Rp 50 billion. On January 28, 2013, a payment of Rp 1 billion was handed to Fathanah and coded as "meat." He was later arrested by the Corruption Eradication Commission (KPK) at Hotel Le Meridien with the bribe money and a companion. Wiretapped communications served as the main evidence, leading to Luthfi's arrest, prosecution, and conviction. This case illustrates how wiretapped voice recordings can play a decisive role in uncovering political corruption in Indonesia.¹³

Previous studies have examined the legal standing of voice recordings as evidence within Indonesia's criminal law system, particularly in the context of electronic evidence as regulated by the ITE Law, despite the lack of explicit provisions in KUHAP. Research by Evi Hartanti (2019) and Ridwan Nasution (2021), for instance, underscores the importance of both formal and substantive legality in the courtroom use of electronic evidence, including voice recordings. Meanwhile, in Islamic criminal law, contemporary scholars such as Wahbah az-Zuhaili affirm that voice recordings can serve as valid *qarinah* or *bayyinah* in *ta'zir* cases, provided they adhere to principles of justice and do not violate *maqāṣid al-sharī'ah*. Nevertheless, few comparative and in-depth studies have explored the position of voice recordings in both legal systems simultaneously—particularly in addressing the need for modern, technology-based evidence. Therefore, this research seeks to fill that gap by normatively analyzing the validity of voice recordings under both

¹² T. A. W. Sabubu, "Alat Bukti Elektronik Dalam Pembuktian Perkara Pidana Perspektif Hukum Positif Indonesia Dan Hukum Islam" (Skripsi, 2018).

¹³ A. Nathaniel, *Kriminalisasi, Trading in Influence, melalui Ketentuan Suap* (Anotasi Putusan No. 38/PID.SUS/TPK/2013/PN. JKT. PST), 1.

positive law and Islamic criminal law, in order to contribute to the development of a fair and relevant evidentiary system in the digital age.

Regarding law enforcement in Indonesia, wiretapping plays a critical role in revealing various crimes. However, in Islamic criminal law, wiretapping is not formally recognized and is often categorized as *tajassus* (spying), which violates an individual's privacy and is prohibited under Sharia. This contrast highlights the differing approaches between Indonesia's positive law and Islamic criminal law in the use of electronic evidence such as wiretaps.¹⁴ In Islamic criminal law, the evidentiary process is crucial for upholding justice and preventing injustice. The term *al-bayyinah* refers to anything that can clarify and demonstrate the truth.¹⁵ Standards of proof vary depending on the type of crime (*jarimah*), and evidence in Islamic legal procedure serves as *hujjah* (a convincing argument), significantly influencing sentencing and avoiding doubt in determining the truth. In both general and specific criminal cases, all forms of evidence—including voice recordings—play a role in uncovering the truth (*al-bayyinah*).

In criminal procedural practice, voice recordings are typically treated as *qarinah* (indications), which must be assessed in conjunction with other forms of evidence. Although classical Islamic criminal law did not widely recognize voice recordings, the advancement of technology and the increasing complexity of criminal methods have prompted their consideration as potential evidence. Thus, further research is needed to ensure that voice recordings attain a legitimate and appropriate position within the evidentiary framework of Islamic criminal courts.

Evidence is a vital component of law enforcement processes. In classical Islamic criminal jurisprudence (*fiqh jinayah*), several types of evidence have long been acknowledged as valid. In response to the developments in information technology and its impact on law enforcement, the government enacted Law No. 11 of 2008, later amended by Law No. 19 of 2016, and most recently revised as Law No. 1 of 2024 on Electronic Information and Transactions (ITE Law). This legislation officially recognizes electronic evidence as valid in criminal proceedings. Article 5(1) of the law states: "Electronic Information and/or Electronic Documents and/or their printouts shall constitute valid legal evidence." Article 5(2) adds: "Electronic Information and/or Electronic Documents and/or their printouts as referred to in paragraph (1) constitute an expansion of legally recognized evidence under applicable procedural law in Indonesia." This expansion implies the recognition of independent evidentiary tools not explicitly

¹⁴ G. Farida, *Kewenangan Penyadapan Oleh Komisi Pemberantasan Korupsi Menurut Hukum Positif dan Fiqh Siyasa* (Disertasi, UIN Ar-Raniry, 2022).

¹⁵ S. Azwar, *Eksistensi Alat Bukti dalam Pengadilan* (Disertasi, UIN Fatmawati Sukarno Bengkulu, 2018).

mentioned in KUHAP.¹⁶ Based on these developments, the author is motivated to conduct further research and present the findings in the form of a scientific paper.

METHODS

This study uses a normative juridical approach with a literature study method (*library research*),¹⁷ aiming to examine the provisions of positive law and the principles of Islamic law concerning the admissibility of voice recordings as evidence in criminal law. Data were collected through the review of legal documents,¹⁸ including statutory regulations (particularly the Criminal Procedure Code/KUHAP and the Electronic Information and Transactions Law/ITE Law), jurisprudence, and the opinions of criminal law experts. In the context of Islamic law, the sources used include classical and contemporary fiqh literature, fatwas from Islamic scholars, and views from credible religious institutions. The data analysis was carried out qualitatively by interpreting the content of the legal documents¹⁹ and literature to identify the compatibility, differences, and potential for harmonization²⁰ between the positive legal system and Islamic law. This approach is considered relevant, as it enables a comprehensive and well-reasoned exploration of the normative position of voice recordings as legal evidence in both legal systems.²¹

RESULTS AND DISCUSSION

1. Legal Validity of Voice Recordings as Evidence in Indonesian Criminal Law

In the Indonesian criminal justice system, voice recordings are recognized as valid evidence through the development of regulations and court decisions. Although not explicitly mentioned in the Criminal Procedure Code (KUHP), voice recordings have gained legal legitimacy through the Electronic Information and Transactions Law (ITE Law) and several judicial rulings.²² The legal foundation for the use of voice recordings as evidence primarily refers to Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE Law). Although this law does not explicitly mention "voice

¹⁶ Undang-Undang Republik Indonesia Nomor 1 Tahun 2024 tentang Informasi dan Transaksi Elektronik (ITE), Pasal 5 ayat (1) dan (2), 27.

¹⁷ S. H. Sahir, *Metodologi Penelitian* (Penerbit KBM Indonesia, 2021), 1.

¹⁸ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2011), 14.

¹⁹ S. H. Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan* (Unigres Press, 2023), 2.

²⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. VI (Jakarta: Kencana Prenada Media Group, 2010), 133.

²¹ Supoto, *Metodologi Penelitian Kualitatif* (Surakarta: Sebelas Maret University Press, 2002), 69.

²² Undang-Undang Republik Indonesia Nomor 1 Tahun 2024 tentang Informasi dan Transaksi Elektronik.

recordings," they are included under the broader scope of electronic information and valid evidence as stipulated in the following articles:

Article 1, Paragraph 2:

Electronic information refers to one or a set of electronic data, including text, sound, images, maps, designs, photographs, e-mails, telegrams, symbols, numbers, access codes, or similar items.

Article 5, Paragraphs (1) and (2):

- a) Electronic Information and/or Electronic Documents and/or printed results thereof shall be considered valid legal evidence.
- b) Such evidence constitutes an expansion of admissible evidence under procedural law applicable in Indonesia.

Article 6:

Electronic Information and/or Electronic Documents shall be considered valid as written evidence as long as they can be accessed, displayed, guaranteed for their integrity, and accounted for.

Article 48A:

Evidence in the form of Electronic Information and/or Electronic Documents may only be used if processed through electronic systems that meet the government's standards.

In KUHAP, voice recordings may be considered as indirect evidence under Article 188, where they are interpreted as circumstances that help uncover the truth of a criminal act, despite not being explicitly stated. Legal scholars such as Prof. Dr. Eddy O.S. Hiariej affirm that electronic evidence, including voice recordings, represents an expansion of evidentiary tools recognized in KUHAP.²³ A voice recording is admissible as long as the information contained within it is accessible, displayable, maintains integrity, and is verifiable. Dr. Reda Manthovani, a cyber law and digital forensics expert, emphasizes that the validity of a voice recording largely depends on proper handling and storage procedures.²⁴ Recordings that follow appropriate digital forensic procedures possess higher probative value. Likewise, Prof. Dr. M. Yahya Harahap, S.H., in his work on KUHAP, states that although not directly mentioned, voice recordings may be interpreted as indicative evidence if a broader interpretation is applied.²⁵ To be accepted as admissible evidence, a voice recording must meet several requirements. Materially, it

²³ Eddy O. S. Hiariej, *Teori dan Hukum Pembuktian* (Jakarta: Erlangga, 2012), 2-3.

²⁴ Reda Manthovani, "Problematisasi dan Solusi Penanganan Bukti Digital Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 20, no. 2 (2013).

²⁵ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP* (Jakarta: Sinar Grafika, 2016).

must be authentic, intact, relevant to the case, and lawfully obtained. Formally, it must be validated by a digital forensic expert, handled through a clear procedure, and accompanied by verifiable metadata. Procedurally, wiretapping or recording must comply with legal provisions, such as those outlined in Constitutional Court Decision No. 20/PUU-XIV/2016. Its submission must also follow proper procedural rules.

The evidentiary weight of a voice recording is determined freely by the judge, as stipulated in Supreme Court Circular No. 14 of 2010, based on acquisition methods, recording quality, correlation with other evidence, and expert testimony.²⁶ In practice, the admissibility of a voice recording as evidence heavily depends on various factors, including its means of acquisition, authenticity, and conformity with applicable legal provisions. For instance, the South Jakarta District Court Decision No. 38/Pid.Sus/TPK/2013/PN.Jkt.Sel admitted a recorded telephone conversation as indirect evidence in a bribery case.

However, challenges remain in using voice recordings as evidence, such as the risk of manipulation through artificial intelligence (e.g., deepfakes), which can create convincingly false recordings, and the need for advanced forensic techniques. Regulatory developments, including the draft of the new KUHAP that is more open to electronic evidence, and efforts to align with international frameworks such as the Budapest Convention (on cybercrime), are expected to strengthen the legal foundation for the use of voice recordings as evidence.

2. Legal Validity of Voice Recordings as Evidence in Islamic Criminal Law

The development of information technology has introduced new forms of evidence, such as voice recordings, which were not recognized in classical Islamic law. The admissibility of voice recordings as evidence in Islamic criminal law has become a contemporary issue amidst technological advancement and the demand for justice in judicial processes. In Islamic criminal law (*fiqh jinayah*), the acceptance of voice recordings as evidence is a key topic among contemporary Muslim jurists. Although the Qur'an and Hadith do not explicitly mention modern technology, Islamic principles of evidence remain applicable as long as they do not contradict sharia. Traditionally, Islamic criminal evidence relies on: Confession (*iqrār*), Testimony (*shahādah*), Oath (*yamīn*), Circumstantial evidence (*qarīnah*), Proof (*bayyinah*). Voice recordings are not found in classical jurisprudence texts, as they emerged after these were compiled. However, Islamic law is capable of adapting through *ijtihad* and sharia-based principles. In *ta'zīr*

²⁶ Surat Edaran Mahkamah Agung (SEMA) No. 14 Tahun 2010 tentang Dokumen Elektronik sebagai Kelengkapan Permohonan Kasasi dan Peninjauan Kembali.

cases, where the type and severity of punishment are left to judicial discretion, evidentiary rules are more flexible. In this context, scholars—both classical and contemporary—affirm that indirect evidence (qarīnah) may be used in support of a case.

Voice recordings are considered a form of modern qarīnah and can serve as the basis for evidence if they meet certain standards. The Qur'an, in Surah An-Nisa (4:58), underscores the importance of fair and just adjudication:

"Indeed, Allah commands you to render trusts to whom they are due and when you judge between people, to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is All-Hearing and All-Seeing." (Qur'an 4:58).

Islamic criminal law adheres to the principles of precaution (al-iḥtiyāt) **and** certainty (al-yaqīn), as reflected in the Hadith:

"The burden of proof is on the claimant, and the oath is upon the one who denies."
(H.R. Al-Bayhaqi).²⁷

This Hadith highlights the necessity of strong, non-doubtful evidence, especially in criminal cases involving severe penalties. Types of evidence in Islamic criminal law include:

a. Confession (Iqrār)

In *fiqh jinayah*, a confession is a strong form of evidence. It refers to a defendant's acknowledgment of a criminal act. For the confession to be valid, it must be clear, voluntary, and made by a sane individual. If these conditions are fulfilled, the judge may rule without requiring additional evidence.²⁸

b. Testimony (Shahādah)

This involves a person's account in court about events they have directly seen, heard, or experienced. Testimony holds significant weight due to the witness's direct knowledge of the incident.²⁹

c. Oath (Yamīn)

An oath is a sworn statement made in the name of Allah with full accountability. Oaths cannot stand alone as evidence, except in cases such as li'ān (a husband accusing his wife of adultery without witnesses) or yamin al-battah (decisive oaths) used to refute allegations in the absence of strong evidence. Judges must not base rulings solely on oaths, but must also consider other evidence such as testimony, written documents, circumstantial indicators, or confessions.³⁰

²⁷ Al-Baihaqi, *Sunan al-Baihaqi*, Hadis No. 19978.

²⁸ Anshoruddin, *Hukum Pembuktian Menurut Hukum Acara Islam Dan Hukum Positif*, 92.

²⁹ Basiq Djalil, *Peradilan Islam* (Ciputat: Amzah, 2011), 44.

³⁰ Sayyid Sābiq, *Fiqh al-Sunnah*, terj. Mahyudin Syaf, 459.

The use of voice recordings in Islamic criminal law varies by case type. In hudūd and qisās cases, most scholars consider voice recordings insufficient due to the need for definitive evidence (qaṭʿī). However, in taʿzīr cases, voice recordings may be accepted as qarīnah (circumstantial evidence) or bayyinah (indirect proof), based on the principle of istiḥsān—a legal preference that considers public benefit in modern contexts.³¹ Several Muslim-majority countries have accepted electronic evidence, including voice recordings: Saudi Arabia allows voice recordings as qarīnah in taʿzīr cases. Malaysia, under the *Islamic Financial Services Act 2013*, accepts recordings in sharia-compliant financial cases. Egypt, through Law No. 175 of 2018 on Cybercrime, formally recognizes voice recordings as admissible evidence.

Dr. Iyad bin Nami Al-Salmi, in his 2015 study *Al-Qarāʾin wa Dawruhā fī al-Ithbāt al-Jināʾī*, emphasizes the need for sharia-compliant forensic standards to verify voice recordings. He identifies the main challenge as ensuring authenticity and preventing manipulation, particularly given technological advances.³² Abdul Qadir Audah, in his book *At-Tashrīʿ al-Jināʾī al-Islāmī*, states: "Qarāʾin may be accepted in taʿzīr-related hudud cases if they are strong and clearly indicate the occurrence of a crime."³³ This supports the admissibility of voice recordings in taʿzīr cases such as bribery, provided they meet strength and relevance requirements.

Comparative Table: Legal Validity of Voice Recordings in Indonesian and Islamic Criminal Law

Aspect	Indonesian Criminal Law (KUHP & ITE Law)	Islamic Criminal Law (Fiqh Jinayah)
Legal Basis	Law No. 1 of 2024 on ITE (Articles 1, 5, 6, 48A); KUHP Article 188; Constitutional Court Decision No. 20/PUU-XIV/2016	Not explicitly mentioned in Qur'an/Hadith; accepted through contemporary <i>ijtihad</i> in taʿzīr cases as qarīnah/bayyinah
Type of Evidence	Electronic information and documents, including voice recordings	Voice recordings as qarīnah (circumstantial) and bayyinah (indirect) in taʿzīr cases
Validity Requirements	Must be intact, authentic, relevant, lawfully obtained, and forensically processed	Must be strong, authentic, not contradict sharia, and verified according to Islamic forensic standards

³¹ Mesir, *Undang-Undang No. 175 Tahun 2018 tentang Kejahatan Cyber*.

³² Iyad bin Nami Al-Salmi, *Al-Qarāʾin wa Dawruhā fī al-Ithbāt al-Jināʾī* (2015).l.

³³ Abdul Qadir Audah, *At-Tasyrīʿ al-Jināʾī al-Islāmī*, Jilid 2, 268–272.

Judicial Evaluation	Judges exercise discretion based on recording quality, acquisition method, and expert testimony	Judges evaluate based on <i>istihsān</i> , precaution (<i>iḥtiyāt</i>), and certainty (<i>yaqīn</i>)
Limitations	Not explicitly regulated in KUHAP; deepfake risks and tech manipulation	Not admissible in <i>hudūd</i> and <i>qisās</i> ; accepted in <i>ta'zīr</i> under specific conditions
Practice in Muslim Countries	-	Saudi Arabia, Malaysia, and Egypt accept voice recordings as legal evidence in <i>ta'zīr</i> and cybercrime cases
Scholars' Opinions	Eddy OS Hiariej, M. Yahya Harahap, Reda Manthovani stress evidentiary value if forensic standards are met	Iyad bin Nami Al-Salmi, Abdul Qadir Audah support strong <i>qarīnah</i> if clearly linked to criminal acts

While Indonesian criminal law and Islamic criminal law differ in normative foundations and procedural frameworks, both systems allow room for the admissibility of voice recordings, especially in flexible cases such as *ta'zīr*. At the national level, regulatory reinforcement and technical guidelines are essential to ensure legal certainty and protect fundamental rights in the use of voice recordings. Meanwhile, in Islamic law, collective *ijtihād* among scholars is needed to establish sharia-compliant standards for digital evidence in response to technological challenges. Therefore, integrating modern evidentiary methods with substantive sharia values can contribute to a fair, accurate, and contextually relevant judicial process.

3. Islamic Criminal Justice Perspective on the Admissibility of Voice Recordings as Evidence

In the context of Islamic criminal justice, the issue of the admissibility of modern evidence such as voice recordings presents an interesting and significant discourse. This is due to the fact that classical Islamic criminal law does not explicitly recognize technology-based evidence such as audio recordings, videos, or electronic data. However, the principles of Islamic law are dynamic and allow for development through the approaches of *maqāṣid al-sharī'ah* and *ijtihād*.³⁴

³⁴ Yussy Adelina Mannas dan Siska Elvandari, *Aspek Hukum Telemedicine di Indonesia* (Jakarta: PT. RajaGrafindo Persada-Rajawali Pers, 2023).

Islamic criminal courts traditionally base evidentiary proceedings on several primary forms of proof, namely confession (*iqrār*), testimony (*shahādah*), oath (*yamīn*), and in certain cases, strong indications or circumstantial evidence (*qarīnah*) that can lead to the truth. In *ḥudūd* and *qisās* cases, evidentiary standards are extremely strict, and *qarīnah* is not accepted as a primary means of proof due to the serious and irrevocable legal consequences involved. Therefore, in cases such as *zinā* (adultery), *qadhf* (false accusation of adultery), or theft, voice recordings cannot serve as a basis for imposing *ḥudūd* punishments, as they do not meet the explicit requirements of *sharī'ah* evidence – such as the testimony of four just male witnesses or a voluntary and repeated confession.

However, this differs in the case of *ta'zīr* crimes. *Ta'zīr* refers to discretionary punishments imposed by a judge for offenses not subject to fixed *ḥudūd* or *qisās* penalties as specified in the sacred texts. In *ta'zīr* cases, evidentiary requirements are less stringent. Therefore, contemporary and some classical scholars allow the use of *qarīnah* or indirect evidence, provided it is strong, valid, and leads to the truth. In this regard, voice recordings may be accepted as evidence in Islamic criminal proceedings as long as their authenticity can be verified and they are not fabricated or tampered with. *Qarīnah* refers to clues or indirect indicators that can reinforce the judge's conviction regarding the truth of an event. Its use is particularly relevant in *ta'zīr* cases, where judges have broader discretion and the evidentiary standards are more flexible compared to *ḥudūd* cases.³⁵

In the Islamic legal context, *qarīnah* is an indirect form of evidence that strongly suggests the occurrence of a criminal act, even though it is not a primary form of proof like confession (*iqrār*) or testimony (*shahādah*). In *fiqh* terminology, *qarīnah* refers to circumstances surrounding an incident that logically point to its association with a criminal act.³⁶ *Qarīnah* is not conclusive in itself but can reinforce the judge's *qaṭ'i* (firm) conviction in establishing material truth. The use of *qarīnah* as evidence has certain limitations.³⁷ In *ḥudūd* cases such as adultery, theft, or false accusations of adultery, and in *qisās* cases such as murder, *qarīnah* is rarely utilized because Islamic law requires clear and definitive evidence. However, in *ta'zīr* cases – offenses for which punishments are not directly stipulated in the Qur'an or Ḥadīth – *qarīnah* plays a vital role. In such cases, judges are granted discretion to consider *qarīnah* so long as it does not contradict the core principles of *sharī'ah*.

³⁵ Syahrul Azwar, *Eksistensi Alat Bukti dalam Pengadilan* (Disertasi, UIN Fatmawati Sukarno Bengkulu, 2018).

³⁶ L. A. Yudhatama, *Analisis Keterangan Ahli dalam Persidangan Perspektif Hukum Pidana Islam dan Hukum Positif Indonesia* (Skripsi, 2017).

³⁷ M. Candra, S. AG, dan M. H. M. AG, *Pembuktian dalam Perspektif Hukum Islam (Analisis terhadap Alat Bukti Qarīnah)* (Disertasi, IAIN Imam Bonjol, 2002).

Abdul Qadir Audah, in his book *At-Tashrī' al-Jinā'ī al-Islāmī*, affirms that in cases other than *ḥudūd*, a judge may impose punishment based on strong *qarā'in* (plural of *qarīnah*) if he is convinced by them. In Volume 2, page 270, he writes:

"In cases other than ḥudūd offenses, it is permissible for a judge to rule based on strong indications if he feels assured by them."

This statement provides a legitimate foundation for the use of indirect evidence – including voice recordings – so long as such evidence instills strong and convincing assurance in the judge.³⁸ Thus, if a voice recording is obtained through lawful surveillance and its authenticity is verified, it may be admitted as valid *qarīnah* in Islamic criminal law, particularly in *ta'zīr* cases such as bribery, extortion, or corruption. Such recordings can reinforce a defendant's confession, witness testimony, or even serve as primary evidence leading to judicial conviction.

Yusuf al-Qaradawi, in his book *Fiqh al-Jināyah fī al-Islām* (pp. 139–142), emphasizes:

"Islamic law does not reject the means of modern technological advancement, so long as they do not contradict the foundational principles and objectives of religion. New forms of evidence – such as voice recordings, electronic devices, surveillance cameras, footprints, and recording instruments – may be considered as qarā'in to establish crimes, particularly in ta'zīr cases, provided their purpose is to uphold justice and prevent corruption and criminality in society."

This view aligns with the principles of *maqāsid al-sharī'ah*, which prioritize the protection of life, property, intellect, and human dignity.³⁹ Furthermore, Wahbah al-Zuhaylī in *Al-Fiqh al-Islāmī wa Adillatuhu*, Volume 6 (pp. 48–56), states:

*"In ta'zīr cases, judges are granted broader flexibility in selecting and adopting evidence, as long as it does not conflict with the principles of sharī'ah. Qarā'in may be accepted if they are strong, consistent, and support the truth. In the absence of a confession or testimony, judges may rely on qarīnah, considering public interest and crime prevention. Moreover, modern forms of evidence – such as audio recordings, electronic data, and digital signs – can also be utilized as proof."*⁴⁰

Islamic criminal justice essentially provides room for the recognition and use of voice recordings as evidence, particularly in *ta'zīr* cases. The main condition is that the recording must be proven authentic, free from manipulation, and capable of instilling strong judicial conviction. In this context, the use of voice recordings is not only legally permissible but also consistent with the principles of *maṣlaḥah* (public interest) and justice

³⁸ Abdul Qadir Audah, *At-Tasyrī' al-Jinā'ī al-Islāmī*, Jilid 2 (Kairo: Dar al-Kitab al-'Arabi), 268–272.

³⁹ Yusuf al-Qaradawi, *Fiqh al-Jināyah fī al-Islām* (Kairo: Maktabah Wahbah), 139–142.

⁴⁰ Wahbah al-Zuhaili, *Al-Fiqh al-Islāmī wa Adillatuhu*, Jilid 6 (Damaskus: Dar al-Fikr), 48–56.

under the framework of *maqāṣid al-sharī'ah*. Therefore, contemporary Islamic courts have solid scholarly and legal foundations to accept voice recordings as evidence in criminal cases outside the scope of *ḥudūd* and *qisās*, as part of the broader goal of upholding justice and maintaining public order. Examples of *qarīnah* in *ta'zīr* cases include the use of voice recordings, CCTV footage, digital footprints, electronic transactions, or behavioral expressions of suspects indicating their involvement in crimes such as bribery, extortion, or corruption. As long as such evidence is authentic, unmanipulated, and persuasive to the judge, it may serve as a valid basis for imposing *ta'zīr* punishments.

CONCLUSION

Based on the analysis conducted, it can be concluded that voice recordings are considered admissible as evidence in both Indonesian criminal law and Islamic criminal law, provided that the principles of authenticity, relevance, and compliance with applicable legal procedures are fulfilled. In the positive legal system, voice recordings have gained legitimacy as electronic evidence through Law Number 1 of 2024 on Electronic Information and Transactions. However, since they are not explicitly regulated under the Criminal Procedure Code (KUHP), there is a need for reform or the addition of legal provisions in criminal procedural law to provide a stronger legal foundation and prevent varying interpretations at the judicial level.

On the other hand, Islamic criminal law allows the use of voice recordings as *qarīnah* or *bayyinah*, particularly in *ta'zīr* cases, where judges are granted discretion to assess evidence based on *ijtihād*. Nonetheless, to promote uniformity in interpretation and practical application, a collective fatwa from authoritative religious institutions such as the Indonesian Council of Ulama (MUI) is necessary to explicitly define the status of voice recordings in the context of criminal evidence.

This study makes a scholarly contribution by bridging the understanding between two different legal systems in responding to technological advancements, while also offering practical input for regulatory reform and judicial technical guidelines. In the future, the Supreme Court may consider drafting specific guidelines on the admissibility of voice recordings as evidence to ensure consistency in court practices. The integration of positive legal principles and sharia values represents a crucial step toward a justice system that is adaptive, fair, and contextual in the digital era.

REFERENCES

Audah, Abdul Qadir. *At-Tasyri' al-Jinā'ī al-Islāmī*. Jilid 2. Kairo: Dar al-Kitab al-'Arabi.

- Azwar, S. Eksistensi Alat Bukti dalam Pengadilan (Studi Komparatif Menurut Hukum Islam dan Hukum Positif di Indonesia). Disertasi, UIN Fatmawati Sukarno Bengkulu, 2018.
- Candra, M., AG, S., dan M. H. M AG. Pembuktian dalam Perspektif Hukum Islam (Analisis terhadap Alat Bukti Qarinah). Disertasi, IAIN Imam Bonjol, 2002.
- Djalil, Basiq. Peradilan Islam. Ciputat: Amzah, 2011.
- Farida, G. Kewenangan Penyadapan Oleh Komisi Pemberantasan Korupsi Menurut Hukum Positif dan Fiqh Siyasah. Disertasi, UIN Ar-Raniry, 2022.
- Hamzah, Andi. Hukum Acara Pidana Indonesia. Jakarta: Sinar Grafika, 2008.
- Harahap, M. Yahya. Pembahasan Permasalahan dan Penerapan KUHAP. Jakarta: Sinar Grafika, 2016.
- Hiariej, Eddy O. S. Teori dan Hukum Pembuktian. Jakarta: Erlangga, 2012.
- Iyad bin Nami Al-Salmi. Al-Qara'in wa Dauruha fi al-Ithbat al-Jina'i. 2015.
- Kurniawan, I Wayan Edy, dan Muhammad Zainal Abiddin. Tentang Hukum Acara Pidana: Pengantar dari Dekan Fakultas Hukum Universitas Udayana. Depok: Indie Publishing, 2014.
- Mannas, Yussy Adelina, dan Siska Elvandari. Aspek Hukum Telemedicine di Indonesia. Jakarta: PT. RajaGrafindo Persada-Rajawali Pers, 2023.
- Manthovani, Reda. "Problematika dan Solusi Penanganan Bukti Digital Di Indonesia." Jurnal Hukum Ius Quia Iustum 20, no. 2 (2013).
- Marzuki, Peter Mahmud. Penelitian Hukum. Cetakan Keenam. Jakarta: Kencana Prenada Media Group, 2010.
- Nathaniel, A. Kriminalisasi, Trading in Influence, melalui Ketentuan Suap (Analisis Putusan Perkara Tindak Pidana Korupsi No. 38/PID. SUS/TPK/2013/PN. JKT. PST atas Terdakwa Luthfi Hassan Ishaq).
- Qaradawi, Yusuf al-. Fiqh al-Jināyah fi al-Islām. Kairo: Maktabah Wahbah.
- Sābiq, Sayyid. Fiqih al-Sunnah. Terj. Mahyudin Syaf.
- Sabubu, T. A. W. Alat Bukti Elektronik dalam Pembuktian Perkara Pidana Perspektif Hukum Positif Indonesia dan Hukum Islam. Skripsi, 2018.
- Sahir, S. H. Metodologi Penelitian. Jakarta: KBM Indonesia, 2021.
- Safitri, A. O., P. A. Handayani, dan Y. T. Herlambang. "Manusia dan Teknologi: Studi Filsafat Tentang Peran Teknologi dalam Kehidupan Sosial." Jurnal Pendidikan Sosial dan Humaniora 2 (2023): 4.
- Salama, Nadiatus. Fenomena Korupsi di Indonesia: Kajian Mengenai Motif dan Proses Terjadinya Korupsi. Semarang: Pusat Penelitian IAIN Walisongo, 2010.

- Sharfina, Lulu Azmi. Keabsahan Kesaksian (Keterangan Saksi) yang Disampaikan Secara Teleconference di Persidangan. Skripsi, Fakultas Hukum Universitas Islam Indonesia, 2018.
- Soekanto, Soerjono, dan Sri Mamudji. Penelitian Hukum Normatif: Suatu Tinjauan Singkat. Jakarta: Rajawali Pers, 2011.
- Sodiki, Achmad. Kejahatan Mayantara (Cyber Crime). Jakarta: Refika Aditama, 2010.
- Sudah. Kamus Hukum. Jakarta: PT. Asdi Mahatsya, 2007.
- Supoto. Metodologi Penelitian Kualitatif. Surakarta: Sebelas Maret University Press, 2002.
- Wardana, Yaseya Wisnu. "Ini Dia Sejarah Singkat Rekaman Di Dunia." Compusician News.com. <https://compusiciannews.com/2014/05/25/Ini-Dia-Sejarah-Singkat-Rekaman-di-Dunia-1088/>, diakses 6 Desember 2024 pukul 16.30 WIB.
- Yudhatama, L. A. Analisis Keterangan Ahli dalam Persidangan Perspektif Hukum Pidana Islam dan Hukum Positif Indonesia. Skripsi, 2017.
- Zuhaili, Wahbah al-. Al-Fiqh al-Islāmī wa Adillatuhu. Jilid 6. Damaskus: Dar al-Fikr.